



UNITED NATIONS
NATIONS UNIES

ICTR-02-78-1
22-02-2008
(1367 - 1365)
International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

1367
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OR: ENG

TRIAL CHAMBER DESIGNATED UNDER RULE 11 *BIS*

Before Judges: Erik Møse, presiding
Sergei Alekseevich Egorov
Florence Rita Arrey

Registrar: Adama Dieng

Date: 22 February 2008

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THE PROSECUTOR

v.

Gaspard KANYARUKIGA

Case No. ICTR-2002-78-I

DECISION ON *AMICUS CURIAE* REQUEST BY THE KIGALI BAR ASSOCIATION

Rule 74 of the Rules of Procedure and Evidence

The Prosecution

Hassan Bubacar Jallow
Bongani Majola
Silvana Arbia
Alex Obote-Odora
Richard Karegyesa
Georges Mugwanya
Inneke Onsea
François Nsanzuwera
Florida Kabasinga

The Defence

Ernest Midagu Bahati
Camille Yuma

6/2

THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

SITTING as a Chamber designated under Rule 11 *bis*, composed of Judge Erik Møse, presiding, Judge Sergei Aleksevich Egorov, and Judge Florence Rita Arrey;

BEING SEIZED OF the "Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae*" etc., filed on 15 November 2007;

NOTING the Prosecution Response, filed on 16 November 2007, and the Defence Submissions to the Application and the Prosecution Response, filed on 22 November 2007;

HEREBY DECIDES the motion.

INTRODUCTION

1. On 7 September 2007, the Prosecution requested the transfer of the Accused for trial in Rwanda under Rule 11 *bis* of the Rules of Procedure and Evidence. The Chamber has decided several requests for *amicus curiae* status in relation to the transfer proceedings.¹

2. The current application, brought by the Kigali Bar Association, seeks *amicus curiae* status on the basis of its knowledge of the Rwandan justice system, as the sole representative body of the legal profession in Rwanda.² The Defence opposes the application as it considers that the Association's submissions would be supportive of the Rwandan judicial system and, therefore, would be repetitive and redundant given the fact that the Republic of Rwanda will itself be making submissions. The Prosecution does not oppose the application, but requests an opportunity to respond to the merits contained in the *amicus curiae* brief if the Application is granted.

DELIBERATIONS

3. Rule 74 provides that a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organisation or person to appear before it and make submissions on any issue specified by the Chamber.

4. Any submission by a potential *amicus curiae* must be relevant.³ Rule 11 *bis* (C) provides that the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned. It follows that submissions by an organisation with expertise relating the capacity of the Rwandan legal system to ensure a fair trial are relevant.

5. Through the experience of its members representing defendants in criminal cases in Rwanda, the Kigali Bar Association has knowledge about the functioning of the Rwandan judicial system. The Association has committed itself to addressing the following issues: the legislative, judicial and institutional framework for the prosecution of international crimes in Rwanda; and the role and capacity of the Kigali Bar Association in the administration of international criminal justice in Rwanda.⁴

¹ *Prosecutor v. Kanyarukiga*, Case No. ICTR-2002-78-I, Decision on the Request of the Republic of Rwanda for Leave to Appear as *Amicus Curiae* (TC), 9 November 2007; Decision on Defence Request to Grant *Amicus Curiae* Status to Four Non-Governmental Organisations (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the Organisation of Defence Counsel (ADAD) (TC), 22 February 2008; Decision on *Amicus Curiae* Request by the International Criminal Defence Attorneys Association (ICDAA) (TC), 22 February 2008; Decision on *Amicus Curiae* Request by Ibuka and Avega (TC), 22 February 2008.

² Request, p. 3.

³ *Prosecutor v. Musema*, Case No. ICTR-96-13-T, Decision on an Application by African Concern for Leave to Appear as *Amicus Curiae* (TC), 17 March 1999, para. 13.

⁴ Request, para. 7.

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6. The Chamber considers submissions on these issues useful and notes that the association has also filed submissions in other Rule 11 *bis* proceedings before the Tribunal.⁵ It is expected that the brief of the Kigali Bar Association will include observations on trials before the High Court of Kigali and the Supreme Court, which according to Organic Law on the Transfer of Cases will conduct transferred cases.


7. The Defence submits that the benefit of Rule 74 can only be accorded to a party that would otherwise be prejudiced by not being heard before the Tribunal. However, jurisprudence indicates that the role of an *amicus curiae* is not to represent the interests of a particular party, but rather to assist the court by providing an objective view in relation to the issues under consideration. An *amicus curiae* is required to exercise objectivity and impartiality in its submissions.⁶


FOR THE ABOVE REASONS, THE CHAMBER

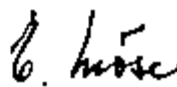
GRANTS *amicus curiae* status to the Kigali Bar Association;

INVITES the Kigali Bar Association to provide written submissions no later than Friday 7 March 2008.

Arusha, 22 February 2008


Erik Mose
Presiding Judge


Sergei Aleksceovich Egorov
Judge


Florence Rita Arrey
P. P. Judge

[Seal of the Tribunal]



⁵ *Prosecutor v. Kayishema*, Case No. ICTR-2005-87-I, Decision on the Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae*, 6 December 2007; *Prosecutor v. Munyakazi*, Case No. ICTR-1997-36-I, Decision on the Application by the Kigali Bar Association for Leave to Appear as *Amicus Curiae*, 6 December 2007; *Amicus Curiae* Brief of the Kigali Bar Association, 10 January 2008.

⁶ *Prosecutor v. Kayishema*, Case No. ICTR-2005-87-I, Decision on the *Amicus Curiae* Request of the Defence of Gaspard Kanyarukiga (TC), 14 September 2007, para. 6; *Prosecutor v. Mitosević*, Case No. IT-02-54-T, Oral Decision (TC), T. 10 October 2002, pp. 11440-11441.